

#### § 35.576

of the Regional Administrator that fiscal circumstances within the Tribe or within the member Tribes of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

(b) For Tribes and Intertribal Consortia eligible under § 35.573(b), the Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 60 percent of the approved costs of maintaining that program.

(c) Revenue collected under a Tribal Title V operating permit program may not be used to meet the cost share requirements of this section.

#### § 35.576 Maintenance of effort.

(a) For Tribes and Intertribal Consortia that are eligible for financial assistance under § 35.573(b) of this subpart, the Tribe or each of the Intertribal Consortium's members must expend annually, for recurrent Section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(1) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare a Tribe's or each of the Intertribal Consortium's member's proposed expenditure level, as detailed in the grant application, to its expenditure level in the second preceding fiscal year. When expenditure data for the preceding fiscal year is complete, the Regional Administrator shall use this information to determine the Tribe's or Intertribal Consortium's compliance with its maintenance of effort requirement.

(2) If expenditure data for the preceding fiscal year shows that a Tribe or Intertribal Consortium did not meet the requirements of paragraph (a) of this section, the Regional Administrator will take action to recover the grant funds for that year.

(3) The Regional Administrator may grant an exception to § 35.576(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that a reduction in expendi-

#### 40 CFR Ch. I (7-1-04 Edition)

tures is attributable to a non-selective reduction of all the Tribe's or each of the Intertribal Consortium's member's programs.

(b) For Tribes and Intertribal Consortia that are eligible under § 35.573(b), the Regional Administrator will not award Section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the Section 105 program.

#### § 35.578 Award limitation.

The Regional Administrator will not disapprove an application for, or terminate or annul an award of, financial assistance under § 35.573 without prior notice and opportunity for a public hearing within the appropriate jurisdiction or, where more than one area is affected, within one of the affected areas within the jurisdiction.

#### WATER POLLUTION CONTROL (SECTIONS 106 AND 518)

#### § 35.580 Purpose.

(a) *Purpose of section.* Sections 35.580 through 35.588 govern water pollution control grants to eligible Tribes and Intertribal Consortia (as defined in § 35.502) authorized under sections 106 and 518 of the Clean Water Act.

(b) *Purpose of program.* Water pollution control grants are awarded to assist Tribes and Intertribal Consortia in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies.

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

#### § 35.582 Definitions.

*Federal Indian reservation.* All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

## Environmental Protection Agency

## § 35.603

*Tribe.* Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior, exercising governmental authority over a federal Indian reservation.

### § 35.583 Eligible recipients.

A Tribe, including an Intertribal Consortium, is eligible to receive a section 106 grant if EPA determines that the Indian Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act (see 40 CFR 130.6(d)).

### § 35.585 Maximum federal share.

(a) The Regional Administrator may provide up to 95 percent of the approved work plan costs for Tribes or Intertribal Consortia establishing a section 106 program. Work plan costs include costs of planning, developing, establishing, improving or maintaining a water pollution control program.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of an Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

### § 35.588 Award limitations.

(a) The Regional Administrator will only award section 106 funds to a Tribe or Intertribal Consortium if:

(1) All monitoring and analysis activities performed by the Tribe or Intertribal Consortium meets the applicable quality assurance and quality control requirements in 40 CFR 31.45.

(2) The Tribe or each member of the Intertribal Consortium has emergency power authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(3) EPA has not assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in the Tribe's or any Intertribal Consortium member's jurisdiction.

(4) The Tribe or Intertribal Consortium agrees to include a discussion of how the work performed under section 106 addressed water quality problems on Tribal lands in the annual report required under § 35.515(d).

(5) After an initial award of section 106 funds, the Tribe or Intertribal Consortium shows satisfactory progress in meeting its negotiated work plan commitments.

(b) A Tribe or Intertribal Consortium is eligible to receive a section 106 grant or section 106 grant funds even if the Tribe or each of the members of an Intertribal Consortium does not meet the requirements of section 106(e)(1) and 106(f)(1) of the Clean Water Act.

### WATER QUALITY COOPERATIVE AGREEMENTS (SECTION 104(B)(3))

### § 35.600 Purpose.

(a) *Purpose of section.* Sections 35.600 through 35.604 govern Water Quality Cooperative Agreements to Tribes and Intertribal Consortia authorized under section 104(b)(3) of the Clean Water Act. These sections do not govern Water Quality Cooperative Agreements under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such cooperative agreements generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment programs and biosolids projects.

### § 35.603 Competitive process.

EPA will award water quality cooperative agreement funds through a competitive process in accordance with national program guidance. After the